Bail Slip

The Accused/ Appellant, Mahadevan @ Kalathi Chennavarthanan was directed to be released on bail as per order of this Court 18.8.2001 and made in Crl.M.P.5035 of 2001 in Crl.A.No.693 of 2001 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-07-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 693 of 2001

Mahadevan @ Kalathi Chennavarthanan ..Appellant/accused

-vs-

State rep by
Inspector of Police
Gobichettipalayam Police Station.
Erode District .. Respondent/complainant

This appeal is filed under Section 374 Cr.P.C.,against the Judgment passed in S.C.No.195/2000 dated 19.7.2001 on the file of II Additional Assistant Sessions Judge, Gobichettipalayam.

For appellant : : Mr. K.Govi Ganesan
For respondent: : Mr.V.R.Balasubramaniam
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred against the Judgment in S.C.195 of 2000 on the file of II Additional Assistant Sessions Judge, Gobichettipalayam.

2. According to the prosecution, on 1.6.2000 at about 7.30 p.m., due to previous enmity, the accused had assaulted the victim P.W.2, with a suri knife on the left side of the lower abdomen resulting grievous injury. The accused has been charged under Section 307 of IPC.

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3. The case was taken on file by the learned Judicial Magistrate,No.1, Gobichettipalayam , on appearance of the accused on summons had furnished copies under Section 207 of Cr.P.C. and since the offence is triable by the Court of Sessions had committed the case to the Sessions Judge under Section 209 of Cr.P.C. The learned Sessions Judge on appearance of the accused had framed charges under Section 307 of Cr.P.C. and when questioned, the accused pleaded not guilty.

4. Before the trial Court, P.Ws 1 to 10 were examined . Exs P1 to P 23 were exhibited and , M.Os 1 and 2 were marked.

5. P.W.1 is the brother of the injured. He is also an eye witness to the occurrence. According to P.W.1, the accused is a neighbour and the injured is his brother. On 1.6.2000 at about 12.00 noon, the accused's sister Nagammal was conducting a chit in which Maranaicker was a subscriber and that the said Maranaicker demanded Nagammal to pay his priced chit amount and in this connection there arose a quarrel between Maranaicker and Mahadevan, the brother of Nagammal, who has made an attempt to assault Maranaicker. When his brother had intervened to prevent the accused from stabbing Maranaicker, the accused took out a suri knife from his waist and stabbed on the lower abdomen of the victim and has also criminally intimidated him, after he had intervened in the matter and immediately he took his brother P.W.2 to the Government Hospital,Gobichettipalayam from where he was referred to the Government Hospital, Erode after giving first aid for further treatment and that the police came to the Government Hospital, Erode and obtained a complaint Ex P.1 from his brother.

5a. P.W.2 is the victim, who would also corroborate the evidence of P.W.1 to the effect that there was an enmity prevailing between Maranaicker and the accused's sister Nagammal in connection with a chit transaction in which Maranaicker was a subscriber of the chit and that on 1.6.2000 at about 8.00p.m., in front of Chinnasamy's sheep pen, the accused, his sister Nagammal, and Maranaicker and his wife were quarrelling with each other in connection with the chit amount due to Maranaicker and that he and his brother intervened and tried to pacify them and that the accused had criminally intimidated Maranaicker and he has also threatened to kill him, if he insists his sister Nagammal to pay the priced chit amount and when he intervened requesting both the parties to go away from the place of occurrence, the accused got infuriated and took out a suri knife and stabbed him on the left side of the lower abdomen resulting his intestine protruding out. Thereafter, his brother took him to the Government Hospital, Gobichettipalayam where after giving first aid, he was referred to the Government Hospital, Erode for further treatment and that he was admitted in the Government Hospital, Erode as an inpatient

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where he underwent surgery.

5b. P.W.3 is an independent ocular witness to the occurrence. She is also a resident of Thottipalayam. She knows about the accused as well as the victim. She is also a subscriber in the chit conducted by the accused's sister Nagammal. According to her, Nagammal owes Rs 2,500/- to her in the chit transactions. She has also complained that when she made a request to Nagammal to repay the chit amount, the accused, who is none other than the brother of Nagammal made an attempt to assault her. P.W.3 is the wife of Maranaicker. According to her, on the date of occurrence, at the time of occurrence, when her husband Maranaicker has made a request to Nagammal to repay the chit amount due, Nagammal and her brother, the accused herein, got infuriated and criminally intimidated with a knife, at that time, P.W.2 intervened, who was assaulted by the accused on the left side abdomen with a knife causing grievous injury and that P.W.2 was removed to the Government Hospital,Gobichettipalayam by P.W.1, the brother of P.W.2.

5c. P.W.9 is the head constable, who had registered the complaint preferred by P.W.1 in Gobichettipalayam Police Station Crime No.377/2000 under Sections 324 and 506 (ii) of IPC. Ex P11 is the first information report. According to P.W.9, on the basis of Ex P10 intimation received from the Government Hospital, Gobichettipalayam on 1.6.2000 at 12.35 hours, he went to the Government Hospital, Erode. But found that the injured was not admitted in the Government Hospital, Erode. On 2.6.2000, at about 3.00a.m., P.W.1 came to the police Station preferred Ex P1 complaint,

5d. P.W.10 is the Inspector of Police, who took up the investigation in this case on the basis of the First Information Report Ex P11. He had visited the place of occurrence on 2.6.2000 at about 5.00 a.m., and prepared Observation Mahazar Ex P2 in the presence of P.W.4. He had also recovered the knife M.O.1 under the Seizure Mahazar Ex P3 in the presence of P.W.4 and another witness Amalraj. He had also recovered M.O.2 blood stained Lungi from P.W.2 Murthy, the injured under ExP4 mahazar in the presence of P.W.4 and another witness. P.W.10 had also drawn a rough sketch ExP12 in the presence of the same witnesses. He has examined the witnesses and recorded their statements. He has also altered the first information report from Section 324 of IPC to Section 307 of IPC. The altered First information report is Ex P13. On 28.7.2000, the accused had surrendered before the High Court and obtained anticipatory bail.

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5e. P.W.5 is the photographer, who had taken Ex P5 series Photographs for the place of occurrence. Ex P6 series are the negatives of Ex P5 series photographs. P.W.6 is the Junior Engineer of Electricity Department. He would depose that on 1.6.2000, there was no disconnection to the electricity service connection NO.3/44 in Thottipalayam from 7.00p.m., to 9.00p.m., Ex P7 is the register containing the entries in this regard.

5f.P.W.7 is the doctor, who had examined P.W.2 on 1.6.2000 at 8.20p.m., who was brought to the hospital by one Selvaraj and that P.W.2 had informed him that he had sustained injury by a known person. He had noticed a stab injury on the left side abdomen of P.W.2 measuring 3 to 4 cm in length through which the intestine was protruding out with fat materials and that he had given first aid to him and referred him to Government Hospital,Erode for further treatment. Ex P8 is the copy of the accident register.

5g.P.W.8 is the doctor, who had conducted surgery on P.W.2 for the injury, he had sustained in the occurrence. According to him, on 1.6.2000 at about 9.05 p.m., P.W.2 was brought by P.W.1 his brother Muthusamy, who was referred to Government Hospital, Gobichettipalayam for further treatment. He would depose that he is working in a private hospital by name "Lotus Apollo Hospital" at Erode and that P.W.2 was brought by P.W.1 to the Lotus Apollo Hospital, Erode, instead of taking him to the Government Hospital, Erode and that P.W.2 was admitted as an in patient in Lotus Apollo Hospital and that he had conducted a surgery on P.W.2 and that Ex P9 is the wound certificate issued by him(P.W.8). According to him, the injury sustained by P.W.2 is a grievous one. After completing the formalities, P.W.10 has filed the charge sheet against the accused which was signed on 25.8.2000 but produced before the Court only on 5.9.2000.

6. When incriminating circumstances were put to the accused under Section 313 Cr.P.C., he has denied his complicity with the crime. After meticulously scanning the evidence both oral and documentary let in before the learned trial Judge, the learned trial Judge has held that the offence under Section 307 of IPC has been made out against the accused and accordingly convicted and sentenced the accused to undergo five years rigorous imprisonment and slapped a fine of Rs.3000/- with default sentence, which necessitated the accused to prefer this appeal.

7. The point for determination in this appeal is whether the conviction and sentence by the trial Court under Section 307 of IPC is sustainable for the reasons stated in the memorandum of the appeal?.

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8. Heard Mr. K.Govi Ganesan, learned Counsel appearing for the appellant and Mr.V.R.Balasubramaniam, learned Government Advocate appearing for the State and carefully considered their rival submissions.

9. The Point:

Apart from the injured witness P.W.2, the ocular witnesses examined on the side of the prosecution are P.W.1 and P.W.3. From the evidence of P.Ws 1 to 3, it is seen that when there was a quarrel between one Maranaicker and the accused's sister Nagammal in connection with a chit transaction , the victim P.W.2 intervened to pacify both the parties, but enraged at the intervention of the victim, the accused had took out the knife from his waist and assaulted him on the left side of the lower abdomen of the victim, which resulted his intestine protruding out. P.W.7 and P.W.8 are the doctors, who have treated P.W.2 victim at Government Hospital, Gobichettipalayam and Lotus Apollo Hospital respectively. Now the only point to be decided in this appeal is whether the injury said to have been caused by the accused to P.W.2 is a grievous injury or a simple injury. Section 320 of IPC defines what are all the grievous injuries. Section 320 of IPC Grievous Hurt: The following kinds of hurt only are designated as "grievous"

" firstly.- Emasculation

Secondly.- Permanent privation of the sight of either eye.

Thirdly.- Permanent privation of the hearing of either ear.

Fourthly. - Privation of any member or joint.

Fifthly.- Desturction or permanent impairing of the powers of any member or joint .

Sixthly.- Permanent disfiguration of the head or face .

Seventhly. - Fracture or dislocation of a bone or tooth.

Eightly: Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits".

10. According to the evidence of P.W.8, the doctor, who had issued Ex P9 wound certificate,the nature of the injury has been described as grievous in nature. But the injury will not come within the definition of Section 320 of IPC to describe it as a grievous injury. The injury may be medically grievous but not legally. The mere protruding out of the intestine from the stomach

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will not derive us to come to a conclusion that the injury sustained by P.W.2 is a grievous one since it will not come under the definitions of "grievous hurt" as under Section 320 of IPC. Under such circumstances, the offence will squarely come under Section 324 of IPC because it has
been established that with a dangerous weapon M.O.12 knife the accused has caused a hurt to P.W.2. So the accused is liable to be convicted under Section 324 of IPC and not under Section 307 of IPC.

11. Coming to the question of sentence, at the time of occurrence, without any provocation and without any motive against PW.2, the accused had stabbed him as seen from the evidence of ocular witnesses P.W.1 to P.W.3. Under such circumstance, I am of the view that imposing of six months rigorous imprisonment will meet the ends of justice under Section 324 of IPC.

12. In fine, the appeal is partly allowed and conviction and sentence by the trial Judge under Section 307 of IPC is set aside and the accused is convicted and sentenced under Section 324 of IPC to undergo six months rigorous imprisonment and a fine of Rs.3000/- in default to undergo two months simple imprisonment. Out of the fine amount, the entire fine amount is to be paid to P.W.2 as compensation under Section 357(1) of IPC. Set off is ordered under Section 428 of IPC. The trial Court is directed to secure the accused by issuing N.B.W and after securing the accused , he shall be sent to prison to spend the unexpended portion of the sentence.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

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To

1. The II Additional Assistant Sessions Judge, Gobichettipalayam.
2. -do through the District and Sessions Judge, Erode.
3. The Judicial Magistrate No.1, Gobichettipalayam
4. -do- through the Chief Judicial Magistrate, Erode.
5. The Public Prosecutor, High Court, Madras

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6. The Inspector of Police, Gobichettipalayam Police Station,Erode
7. The Sub Jail, Gobichettipalayam
8. The Superintendent , Central Jail, Coimbatore.

1 cc to Mr.K. Govi Ganesan, Advocate, sr. 43839

Crl.A.No. 693/2001

ASM (CO)
kk 21/7

HIGH COURT OF JUDICATURE MADRAS
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